

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARCHIE PERDUE,

Plaintiff,

v.

EVERTH BERCIAN,

Defendant.

NO. EDCV 08-1266-ODW (AGR)

ORDER TO SHOW CAUSE WHY
THIS CASE SHOULD NOT BE
DISMISSED WITHOUT
PREJUDICE FOR FAILURE TO
PROSECUTE

For the reasons discussed below, the Court orders Plaintiff to show cause, on or before **June 30, 2009**, why this Court should not recommend dismissal of the First Amended Complaint for failure to prosecute and/or failure to comply with a court order.

I.

BACKGROUND

On December 5, 2008, Plaintiff filed a First Amended Complaint. (Dkt. No. 8.) On February 11, 2009, the district court dismissed the first cause of action against defendant Bercian solely in his official capacity and dismissed the second cause of action for failure to state a claim. (Dkt. No. 12.)

On February 19, 2009, this court ordered service of the First Amended

1 Complaint upon defendant Bercian. (Dkt. No. 15.) The Order Re: Service of
2 Complaint, and Plaintiff's Mailing Address ("Order") required that (1) on or before
3 April 20, 2009, Plaintiff file a Notice of Submission indicating that all required
4 documents have been submitted to the United States Marshal for service of the
5 First Amended Complaint; and (2) on or before March 4, 2009, Plaintiff file a
6 Notice of Current Address with Plaintiff's current mailing address for service of
7 documents from the court or the parties. (Dkt. No. 13.) The Order expressly
8 warned that if Plaintiff fails to file the Notice of Submission by April 20, 2009, "his
9 action will be subject to dismissal without prejudice." (*Id.*) In addition, the Order
10 warned that failure to file a Notice of Current Address "may result in dismissal of
11 the action for failure to prosecute." (*Id.*)

12 To date, Plaintiff has not filed a Notice of Submission or a Notice of Current
13 Address.

14 II.

15 DISCUSSION

16 A district court may, on its own, dismiss an action for failure to prosecute
17 pursuant to Fed. R. Civ. P. 41(b). *Henderson v. Duncan*, 779 F.2d 1241, 1243
18 (9th Cir. 1986). The court is "required to weigh several factors in determining
19 whether to dismiss this case for lack of prosecution: (1) the public's interest in
20 expeditious resolution of litigation; (2) the court's need to manage its docket; (3)
21 the risk of prejudice to the defendants; (4) the public policy favoring disposition of
22 cases on their merits and (5) the availability of less drastic sanctions." *Id.* "A
23 dismissal for lack of prosecution must be supported by a showing of
24 unreasonable delay. Unreasonable delay creates a presumption of injury to the
25 defense." *Id.* (internal citation omitted).

26 To date, Plaintiff has not filed a Notice of Submission or a Notice of Current
27 Address. Because the United States Marshal has not received from Plaintiff the
28 necessary documents, including the USM-285 form, First Amended Complaint

1 and summons, service of process cannot be made on the defendant and this
2 case cannot proceed.

3 **III.**

4 **ORDER**

5 IT IS THEREFORE ORDERED that, on or before **June 30, 2009**, Plaintiff
6 shall show cause why this Court should not recommend dismissal of the action
7 for failure to prosecute. Filing a Notice of Submission of Documents to United
8 States Marshal and filing a Notice of Current Address on or before June 30, 2009,
9 shall be deemed compliance with this Order to Show Cause.

10 ***Plaintiff is cautioned that if he does not timely respond to this Order***
11 ***to Show Cause, the Magistrate Judge may recommend dismissal without***
12 ***prejudice for failure to prosecute and/or failure to follow a court order.***

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15 DATED: June 2, 2009

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18 ALICIA G. ROSENBERG
19 United States Magistrate Judge
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